STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

RICHARD V. STOKAN, Plaintiff/Appellee,	S.C. Docket No. 126706-7
v.	C.A. Docket No. 242645
HURON COUNTY, a Michigan Municipal corporation, Defendant/Appellant.	C.A. Docket No. 243489 L.C. No. 99-000732-CK

DEFENDANT/APPELLANT'S SUPPLEMENTAL AUTHORITY IN FAVOR OF APPLICATION FOR LEAVE TO APPLEAL

126706-7
Supl Auth
of

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SUPPLEMENTAL AUTHORITY

In the instant case, Defendant/Appellant Huron County maintains that Huron County Resolution Resolution 23-83 required an employee to both be fifty-five (55) at the age of retirement *and* have elected to remain under the health care plan in order to receive benefits. Two recent decisions support the Appellant's position. In the recent Michigan Supreme Court decision of ***Studier v. Michigan Public School Employee's Retirement Board***, 472 Mich. 642, 698 N.W.2d 350 (2005), this Honorable Court held that health insurance benefits do not constitute "accrued financial benefits" under Article 9, section 24 of the Michigan Constitution. In addition, the case of ***Borchers v. Crawford Co.***, 2005 WL 2017282 (Mich.App. 2005)(attached) determined that *Studier* applied only to situations in which benefits had already vested. The court further held that where no benefits had yet vested a claimant's constitutional claim must fail.

In *Studier*, six retired public school employees sued the various Michigan State agencies alleging that their co-pays had been increased in violation of the Michigan Constitution. This Honorable Court disagreed and held that health care benefits do not fall under Article 9, section 24 of the Constitution. In *Borchers*, the plaintiffs sued after Crawford County passed a Resolution rescinding post-retirement health insurance benefits for elected officials. The court held that even if Plaintiff were eligible for the benefits they had not vested at the time of recession. In addition, the Court reiterated that health insurance benefits are not "accrued financial benefits," but noted that the issue was moot because Plaintiff's rights never vested.

Likewise, in the case at bar, Plaintiff/Appellee's rights never vested in the health insurance benefits. In addition, even if they had, health care benefits are not "accrued financial rights."

Conclusion

For the foregoing reasons Appellant's respectfully request that this Honorable Court grant its Application for Leave to Appeal and reverse the Court of Appeals decision.

Respectfully submitted,

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.
Alfred W. BORCHERS Plaintiff-Appellant,
v.
CRAWFORD COUNTY, Defendant-Appellee.
No. 260276.

Aug. 23, 2005.

Before: COOPER, P.J., and FORT HOOD and R.S. GRIBBS, [FN*] JJ.

FN* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

[UNPUBLISHED]

PER CURIAM.

***1** Plaintiff appeals as of right from an order granting defendant's motion for summary disposition and denying plaintiff's motion to amend his complaint. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v. Dep't of Transportation,* 456 Mich. 331, 337; 572 NW2d 201 (1998); *Willis v. Deerfield Twp,* 257 Mich.App 541, 548; 669 NW2d 279 (2003). A motion under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v. Auto Club Ins Ass'n,* 252 Mich.App 25, 31; 651 NW2d 188 (2002) . In deciding a motion brought under subrule (C)(10), a court considers all the evidence submitted by the parties, including any affidavits, pleadings, and admissions, in the light most favorable to the nonmoving party. *Id.* at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id.* at 31.

Plaintiff contends that the trial court erred by determining that no question of fact existed regarding whether the November 12, 1985, resolution rescinding post-retirement health insurance benefits for elected officials applied to plaintiff. We agree with the trial court. Throughout this action, plaintiff maintained that he was promised the same benefits that defendant provided elected county officials. Accordingly, the November 12, 1985, resolution rescinding post-retirement health care benefits for elected officials applied to plaintiff as well. Plaintiff argues that his understanding of the November 12, 1985, resolution was that it did not apply to him, and he relies on the affidavits of former board members stating that they did not intend that resolution to apply to him. But no resolution was passed indicating that the resolution did not apply to plaintiff. MCL 46.1(2) requires that the business of a county board of commissioners be performed at a public meeting in accordance with the Open Meetings Act, MCL 15.261 *et seq.* Closed sessions are permitted only with respect to those matters articulated in MCL 15.268, which are not involved in this case. MCL 46.1(3). Thus, regardless whether individual board members told plaintiff that the November 12, 1985, resolution did not apply to him, the board as a whole did not address the issue in an open meeting as required under MCL 46.1(2) and pass a resolution that the November 12, 1985, resolution did not apply to plaintiff, thus entitling plaintiff to post-retirement health insurance benefits. The only resolution that the board passed regarding this issue occurred on February 1, 2002, when the board denied plaintiff such benefits.

Plaintiff also argues that defendant could not unilaterally revoke his entitlement to post-retirement health insurance benefits. Plaintiff principally relies on *Barnell v. Taubman Co, Inc,* 203 Mich.App 110; 512 NW2d 13 (1993). In that case, this Court determined that oral statements made to the plaintiff formed an express agreement with the plaintiff that his employment could be terminated only for just cause. *Id.* at 118. This Court further held that the defendant employer could not unilaterally change the nature of the employment relationship to at-will employment. *Id.* at 118-120. Plaintiff in the instant case argues that, similar to *Barnell,* defendant could not unilaterally revoke his entitlement to post-retirement health insurance benefits.

***2** *Barnell* involved a wrongful discharge dispute and whether the parties had an express contract or whether, based on the "legitimate expectations theory" of *Toussaint v Blue Cross & Blue Shield of Michigan,* 408 Mich. 579, 598; 292 NW2d 880 (1980), the plaintiff legitimately expected, as a result of the employer's policies and procedures, his employment to continue absent just cause for termination. *Barnell, supra* at 116. In *Dumas v. Auto Club Ins Ass'n,* 437 Mich. 521, 531; 473 NW2d 652 (1991) (Riley, J.), the Michigan Supreme Court declined to extend the "legitimate expectations theory" of *Toussaint* to contexts outside the area of wrongful discharge, including compensation. The Court stated that because "employees' accrued benefits are protected by the presence of traditional contract remedies, there is no need to extend the expectations rationale to compensation." [FN1] *Id.* Accordingly, to avoid summary disposition in this case, plaintiff was required to establish a contractual right to post-retirement health insurance benefits. The *Dumas* Court recognized that "written policy statements could give rise to contractual obligations outside the discharge context." *Id.* at 529. But the Court distinguished between vested and non-vested rights. It stated that "a change in a compensation policy which affects *vested* rights *already accrued* may give rise to a cause of action in contract." *Id.* at 530 (emphasis added). The Court recognized that traditional contract principles apply:

> FN1. The Court further stated that policy considerations favor containing the "legitimate expectations theory" to the wrongful termination context:
> Were we to extend the legitimate-expectations claim to every area governed by company policy, then each time a policy change took place contract rights would be called into question. The fear of courting litigation would result in a substantial impairment of a company's operations and its ability to formulate policy. [*Dumas, supra,* 437 Mich. at 531.]

> In short, the adoption of the described policies by the company constituted an offer of a contract. This offer ... "the plaintiff accepted ... by continuing in its employment beyond the 5-year period specified in exhibit B...." [*Id.,* citing *Cain v Allen Electric & Equipment Co,* 346 Mich. 568, 579-580; 78 NW2d 296 (1956) .]

Thus, an offer of a contract is accepted when rights under the proposed contract have accrued or vested.

Plaintiff's right to post-retirement health insurance benefits had not vested at the time the board passed the November 12, 1985, resolution rescinding post-retirement health insurance benefits for elected officials. Thus, even if the board orally granted plaintiff the same benefits as elected officials, because plaintiff's right to post-retirement health insurance benefits had not vested when the board rescinded that right, plaintiff cannot establish a contractual claim to such benefits, and the board was entitled to unilaterally revoke plaintiff's entitlement to the benefits.

Plaintiff also contends that the Michigan Constitution "prohibits impairment of health insurance benefits." Plaintiff relies on Const 1963, art 9, § 24, which states:

> The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

***3** Plaintiff correctly points out that the issue

whether health insurance benefits constitute accrued financial benefits under the above provision is currently before the Michigan Supreme Court in *Studier v Michigan Public School Employees' Retirement Board,* 260 Mich.App 460; 679 NW2d 88 (2004), lv gtd 471 Mich. 875 (2004). In that case, this Court held that health insurance benefits do not constitute "accrued financial benefits" under Const 1963, art 9, § 24. *Id.* at 473. Notwithstanding this Court's holding in *Studier,* the trial court in the instant case correctly found that *Studier* is inapplicable. The plaintiffs in *Studier* were six retired public school employees. Unlike plaintiff in this case, their benefits had already vested when action was taken allegedly infringing upon their rights. *Id.* at 461-462. Moreover, Const 1963, art 9, § 24, itself refers to "accrued financial benefits," implying that such benefits must be vested for the provision to apply. Thus, plaintiff's constitutional argument fails.

Plaintiff further argues that the trial court erred by denying his motion to amend his complaint to include a claim of promissory estoppel. This Court reviews a trial court's decision denying a motion to amend a complaint for an abuse of discretion. *Tierney v University of Michigan Regents,* 257 Mich.App 681, 687; 669 NW2d 575 (2003). Because the November 12, 1985, resolution rescinded any benefits that had been promised plaintiff, plaintiff's claim accrued on November 12, 1985. A six-year statute of limitations applies to claims for promissory estoppel. MCL 600.5807(8); *Huhtala v. Travelers Ins Co,* 401 Mich. 118, 125; 257 NW2d 640 (1977). Because plaintiff did not file his complaint before the expiration of the six-year statute of limitations, his claim is barred. Accordingly, the trial court did not abuse its discretion by denying plaintiff's motion to amend his complaint.

Affirmed.

Not Reported in N.W.2d, 2005 WL 2017282 (Mich.App.)

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